

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated July 7, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 17-30 are pending in the Application. Claims 27-29 are withdrawn from consideration. Claims 17 and 30 are independent claims.

In the Office Action, claims 17, 18, 20-22, 24, 25 and 30 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,660,170 to Rajan ("Rajan") in view of U.S. Patent No. 5,134,995 to Gruenke ("Gruenke"). Claims 19 and 26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rajan in view of Gruenke and further in view of U.S. Patent No. 5,551,419 to Froechlich ("Froechlich"). Claim 23 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rajan in view of Gruenke and further in view of U.S. Patent No. 5,868,133 to DeVries ("DeVries"). These rejections are respectfully traversed. It is respectfully submitted that claims 17-26 and 30 are allowable over Rajan in view of Gruenke alone and in view of any combination of Froechlich and DeVries for at least the following reasons.

As explained at page 2 lines 2-4, of the present application,

Faster breathing shortens the breathing cycle, and in particular, the expiratory part of the breathing cycle. By shortening the expiratory part of the breathing cycle less time is available for the lungs to empty.

Less time to empty the lungs, as further explained at page 10, line 33 to page 11, line 1: "reduces the volume of air which can be exhaled by the subject, and in turn raises the intrinsic positive end-expiratory pressure of each breathing cycle. Accordingly, monitoring the intrinsic pressure of a subject's breathing cycles is utilized in accordance with the present system to collect information for providing proper breathing control.

In the Office Action, means 8 of Rajan is cited as performing monitoring as recited in claim 1. However, a close examination of Rajan reveals that its measuring means are described as follows:

A measuring unit 8 having a pressure gauge 10 and a flow meter 12 is connected to the gas delivery system 6 for measuring respiratory gas flow and pressure. The measured values are supplied to a control unit 14, which calculates an opening pressure based on the measured respiratory gas flow and pressure values.

Rajan measures the present respiratory gas flow and pressure to set the following opening pressure. Further, Rajan does not disclose or suggest performing monitoring over numerous cycles.

The Office Action admits that Rajan does not teach "determining an average intrinsic positive end-expiratory pressure over the monitored plurality of breathing cycles" (see, Office Action, page 4) but references Gruenke as teaching determining the average gas pressure.

Gruenke does discuss measuring the pressure of the gas delivered to the patient using a transducer circuit (see, Gruenke, col. 7, lines 52-60), to measure pressure at nasal pillow. However, similar to Rajan, Gruenke does not teach, disclose or suggest monitoring intrinsic pressure over numerous breathing cycles.

Thus, it is respectfully submitted that the apparatus of claim 17 and the method of claim 30 are not anticipated or made obvious by the teachings of Rajan and Gruenke. For example, Rajan in view of Gruenke do not teach, disclose or suggest, an apparatus that amongst other patentable elements, comprises (illustrative emphasis added) "a monitor configured to monitor a characteristic associated with intrinsic pressure of a plurality of breathing cycles of the subject; a controller configured to determine an average intrinsic positive end-expiratory pressure over the monitored plurality of breathing cycles based on the characteristic output of the monitor,

and control the gas flow generating system based on the determined average intrinsic positive end-expiratory pressure such that a pressure of the flow of gas delivered to the subject during at least a portion of an expiratory phase of a breathing cycle substantially corresponds to the average intrinsic positive end-expiratory pressure" as recited in claim 17 and as substantially recited in claims 30.

Froechlich, and DeVries are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies in each of Rajan and Gruenke.

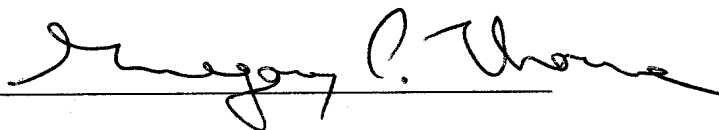
Based on the foregoing, the Applicant respectfully submits that independent claims 17 and 30 are patentable and notice to this effect is earnestly solicited. Claims 18-26 respectively depend from claim 17 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the

presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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